

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3840 of 1985

WITH

SPECIAL CIVIL APPLICATION NO. 4108 OF 1985

WITH

SPECIAL CIVIL APPLICATION NO. 4840 OF 1985

WITH

SPECIAL CIVIL APPLICATION NO. 6754 OF 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

TALJABHAI S RABARI

Versus

STATE OF GUJARAT

Appearance:

MR VM TRIVEDI for Petitioner - Absent

MR LR PUJARI, ASSTT. GOVT PLEADER for Respondent No. 1, 2

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 26/12/2000

ORAL COMMON JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. In these four petitions, the petitioners have challenged the constitutional validity of the newly added provisions of sections 61A to 61G as well as the provisions of sections 52 and 53 to the extent that they were amended by the Indian Forest [Gujarat Amendment] Act, 1983 on the ground that they violate fundamental rights guaranteed by Article 14 and 19(1)(g) of the Constitution of India.

2. In all these matters, vehicles were seized in connection with the illicit carriage of forest produce belonging to the State Government. By the amendment made in the Indian Forest Act, 1927 by the Gujarat State Legislature in section 52, the earlier provision of sub-section [2] to the effect that a report of seizure was to be made to the Magistrate having jurisdiction to try the forest offences on account of which the seizure was made, was substituted by providing that such report was to be made to the concerned authorised officer u/s 61A where the offence on account of which the seizure has been made, is in respect of the forest produce which is the property of the State Government or in respect of which the State Government has any interest; while in other cases, such report was to be made to the Magistrate having jurisdiction to try the offences on account of which the seizure has been made.

3. In cases where the report is made u/s 61A of the Act to the authorised officer, on being satisfied that a forest offence is committed, the authorised officer whether or not a prosecution is instituted for the commission of such forest offence, order confiscation of the property so seized, inter alia, together with the vehicle used in the commission of such offence. Such confiscated property may be ordered to be sold by a public auction. In cases where the order of confiscation made u/s 61A is set aside or annulled by an order u/s 61C or 61D, the proceeds of the property sold are to be paid to the owner or to the person from whom it was seized, as may be specified in such order. Section 61B provides for issuance of show cause notice before confiscation u/s 61A

of the Act. Section 61C provides for a revision, while section 61D for an appeal against the order made u/s 61A or section 61C of the Act. The property which is confiscated under an order u/s 61A, which has become final, would vest free from all encumbrances in the State Government. The jurisdiction of any other officer, court, tribunal or authority to make orders with regard to the custody, possession, delivery, disposal or distribution of the property which is seized including the vehicle used in committing any offence relating to forest produce, has been ousted by section 61G of the Act.

4. The grievance of the petitioners is that, the impugned provisions which provide for a separate treatment in respect of the vehicles seized for the offences relating to forest produce belonging to the State Government and the forest produce belonging to others, create hostile discrimination against the petitioners and violate principles of equality, and therefore, contravene Article 14 of the Constitution.

5. The contention that a special provision in respect of the vehicles used in connection with the offences relating to forest produce belonging to the State Government violates the principles of equality, is wholly misconceived. The use of vehicles in commission of forest offences by removing the forest produce belonging to the State Government, is a situation which is entirely different from theft of private forest produce. It is a fundamental duty of the citizens to protect and improve the natural environment including forests as provided by Article 51A [g] of the Constitution. The State is required by Article 48A to safeguard the forests. In order to provide for a better deterrent against commission of such offences of cutting trees and removing forest produce, it is absolutely necessary that the vehicles, which are the main medium used for large scale removal of forest produce, when seized alongwith illicitly carried forest produce, are dealt with by such special provisions to deter the vehicle owners from allowing them to be used for such nefarious activities. The purpose underlying such special provisions relating to the vehicles used for commission of offences in respect of the forest produce belonging to the State Government, is to ensure that even in cases where the strict standard of proof required for proving an offence in a Magisterial Court, cannot be attained on the standard of proof of preponderance of probabilities, the vehicles used in commission of such offences are confiscated and they vest in the State

Government. The forest produce belonging to the State Government cannot ordinarily be found in a private vehicle unless such vehicle is authorised to carry such forest produce. When forest produce belonging to the State Government is detected in a private vehicle, which is not authorised to carry it, then there is full justification in assuming that the vehicle is used in connection with an offence relating to forest produce belonging to the State Government, and therefore, liable to be confiscated. In our opinion, as the special provision for treating the vehicles which are used in connection with the offence relating to forest produce belonging to the State Government are in furtherance of the objectives underlying the Act and are designed to effectively deter commission of such offence, the classification of treating such vehicles by such special provisions as regards their seizure and confiscation is rational and based on intelligible differentia having nexus with the object sought to be achieved under the Act. The petitioners' challenge therefore cannot be sustained on the ground that the impugned provisions violate fundamental right equality guaranteed by Article 14 of the Constitution.

6. It is obvious from the nature of the impugned provisions that they constitute a reasonable restriction on the fundamental right of the petitioners to carry on trade or business. The owners of vehicles have a duty to ensure that their vehicles are not used for illicit removal of the forest produce. The provisions have adequate built-in safeguards against any arbitrary action of confiscating the vehicles. The revision and appellate provisions ensure that the order of the competent authority is duly scrutinized. In fact, the appellate power is given to the Sessions Judge having jurisdiction over the area which would ensure an impartial approach, as a judicial body applies its mind to the orders of the quasi-judicial authorities. These restrictions intended to ensure curbing commission of forest offences and safeguarding the forests, are, therefore, reasonable restrictions in the interest of general public. The petitioners cannot have a fundamental right to use their vehicles for commission of offences relating to forest produce. Therefore, the challenge against these provisions on the ground that they violate Article 19(1)(g), is wholly misconceived.

7. In this view of the matter, all the petitions fail and are rejected. Rule is discharged in each of them with no orders as to costs. Interim reliefs stands vacated.

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